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February 14, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Rulemaking to Amend the Provision of 52 Pa. Code Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations

Dear Secretary McNulty:

Enclosed herewith for filing on behalf of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company are an original and sixteen (16) copies of comments in response to the Commission's Advance Notice of Proposed Rulemaking Order entered December 4, 2006 in the above-referenced proceeding. Please date stamp the additional copy and return to me in the enclosed postage-prepaid envelope.

As requested, a copy is also enclosed in electronic format (Microsoft Word format) on diskette and is being mailed electronically to Terrence J. Buda, Cyndi Page and Daniel Mumford.

Sincerely,

Carol L. Dacoros

Enclosures

cc: As per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the provisions of 52 Pa. Code Chapter 56 to Comply with the Provisions of 66 Pa C.S. Chapter 14 General Review of Regulations	:	**Docket No. L-00060182**

COMMENTS OF THE FIRSTENERGY COMPANIES: METROPOLITAN EDISON COMPANY PENNSYLVANIA ELECTRIC COMPANY AND PENNSYLVANIA POWER COMPANY

I. Introduction

Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively, the "FirstEnergy Companies") submit these Comments in response to the Advance Notice of Proposed Rulemaking Order ("ANOPR") entered on December 4, 2006 in the above-referenced docket.

The ANOPR seeks input on appropriate regulations to administer and enforce the Responsible Utility Customer Protection Act ("Chapter 14" or "Act 201"). The purpose of Chapter 14 is to seek to eliminate the opportunities for customers capable of paying to avoid paying their utility bills, and to provide utilities with the means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections. The goal of these changes was to increase timely collections while ensuring that service is available to all customers based on equitable terms and conditions.

Pursuant to Section 4 of Chapter 14, by enacting Chapter 14, the Legislature intended to supersede any inconsistent requirements imposed by law on utilities, including, but not limited to, requirements found in Chapter 56 at §§56.32, 56.33, 56.35, 56.41, 56.51, 56.53, 56.81, 56.82, 56.83, 56.91, 56.93, 56.94, 56.95, 56.96, 56.100, 56.101, 56.111, 56.112, 56.113, 56.114, 56.115, 56.116, 56.117, 56.181 and 56.191. Likewise, all other regulations are repealed to the extent of any inconsistency with Chapter 14.

The Commission has been directed by the Legislature (via Section 6 of Chapter 14) to amend 52 Pa. Code Chapter 56 ("Chapter 56") and to promulgate appropriate new regulations to administer and enforce Chapter 14. The FirstEnergy Companies offer the following Comments, focusing on the ten topics set forth in Appendix A to the NOPR, for consideration by the Commission as it formulates the next steps in this important rulemaking process. The FirstEnergy Companies look forward to addressing other Chapter 14 conformity issues in later stages of this rulemaking proceeding.

II. Proposed Chapter 56 Revisions

1. Rules that apply to victims with a protection from abuse (PFA) order and to customers of steam heating, wastewater and small natural gas companies.

Since the FirstEnergy Companies are not steam heating, wastewater or small natural gas companies, its comments on this topic are limited to addressing the rules applicable to customers with PFAs.

The FirstEnergy Companies agree that utility customers with PFAs are intentionally treated differently from other utility customers under Pennsylvania law. Explicitly, pursuant to §1417, customers with PFAs are excluded from the applicability of Chapter 14. To avoid conflicts with Chapter 14, the Commission's rulemaking

proceeding must address where customers with PFAs are to be treated differently from other customers under Chapter 56. This can be accomplished by addressing the unique requirements for PFA customers within the relevant sections of Chapter 56 rather than via a stand-alone new chapter. For example:

- For non-PFA customers, §56.35, which addresses payments of outstanding balances, has been superseded in its entirety by Chapter 14 (per Section 4 of Chapter 14). Since PFA customers are exempt from Chapter 14, the regulations need to continue to address payment obligation terms for PFA customers. To accomplish this, the FirstEnergy Companies propose that §56.35 be modified to narrow its applicability to PFA customers only, and should further be limited to make sure a PFA customer is not held responsible for the balance due for residential service previously furnished to a person other than the PFA customer.
- For non-PFA customers, §56.95, dealing with the deferred termination notice requirements, was superseded by Chapter 14 (per Section 4 of Chapter 14). Since PFA customers are exempt from Chapter 14, the regulations need to address deferred termination notice requirements for PFA customers. The FirstEnergy Companies propose that §56.95 be modified to narrow its applicability to PFA customers only.
- For non-PFA customers, §56.191, dealing with reconnection of service rules, was superseded by Chapter 14 (per Section 4 of Chapter 14). Since PFA customers are exempt from Chapter 14, the regulations need to address reconnection of service rules for PFA customers. The FirstEnergy Companies propose that §56.191 be modified to narrow its applicability to PFA customers only.

2. Previously unbilled utility service.

The concept of adding to the regulations a four-year statute of limitations for "make up" bills was proposed in the ANOPR. The FirstEnergy Companies suggest that if a time limitation is adopted in the regulations, it must apply to both credits and debits to customer bills.

Also, the four-year limit should not apply to restrict the utility's ability to fully recover in cases of theft of service, tampering and fraud. To restrict a person's liability for usage consumed under these circumstances would be bad public policy.

3. Credit Standards

Chapter 14 at §1404(a)(2) requires that utilities are to use "a generally accepted credit scoring methodology which employs standards for using the methodology that fall within the range of general industry practice." In the ANOPR, the Commission states its goal of insuring that the credit standards being used meet the §1404(a)(2) conditions and are applied in an equitable and nondiscriminatory matter. (ANOPR Appendix A, p. 2). The FirstEnergy Companies believe that this goal is already adequately addressed in the regulations in §56.36, which provides:

> "**Written procedures.** A utility shall establish written procedures for determining the credit status of an applicant. A utility employee processing applications or determining the credit status of applicants shall be supplied with or have ready access to a copy of the written procedures of the utility. A copy of these procedures shall be maintained on file in each of the business offices of the utility and made available, upon request, for inspection by members of the public and the Commission."

The current regulation in §56.36 already accomplishes the goal articulated in the ANOPR at Appendix A., p. 2). It is unnecessary and overly burdensome to require the credit standards to be included in the tariff. Generally accepted credit scoring

methodologies evolve over time, and it would be unreasonable to require the utility to update its tariff as changes occur.

Likewise, the FirstEnergy Companies respectfully disagree with the suggestion in the ANOPR that utilities define "other methods" in their tariffs for establishing liability for nonpayment for utility service previously furnished at the same address but in another parties' name for the period during which the applicant resided at the same address. While §1407(e) provides that utilities may use "other methods approved as valid by the Commission," it is overly burdensome and unnecessary to require utilities to include these methods in their tariffs. Rather, the utilities should be able to request Commission approval to use a new method for establishing liability via a petition for approval.

The ANOPR further suggests the introduction of a four-year limitation for the assignment of liabilities for previously non-paid utility service. As stated in the discussion of item 2 above, the four-year limit should not apply to restrict the utility's ability to fully recover in cases of theft of service, tampering and fraud. To restrict a person's liability for usage consumed under these circumstances would be bad public policy.

4. Payment period for deposits.

The March 3, 2005 Implementation Order recognized the challenges faced by utilities in applying Chapter 14's deposit payment rules. The Commission determined in the March 3, 2005 Implementation Order that the following procedure would satisfy the Chapter 14 requirements: Applicants may be required to pay deposits as a condition for reconnection of service in three installments: 50% payable upon the determination by the utility that the deposit is required, 25% payable 30 days after the determination and 25%

payable 60 days after the determination. FirstEnergy Companies suggests that the approach set forth in the March 3, 2005 Implementation Order be incorporated into the regulations. Since all utilities have been operating under the procedure outlined in the March 5, 2005 Implementation Order, it would be efficient (i.e., it would avoid new training of customer service representatives and changes to programming) to continue this practice by incorporating it into the regulations.[1]

With respect to the terms of payment of a deposit to restore service to a *Customer* (as opposed to an *Applicant*, which is addressed in the preceding paragraph), in order to be consistent with the intent of Chapter 14, the existing regulation at §56.42 must be deleted in full. A customer seeking reconnection of service may be required to pay the full amount of a security deposit as a condition to reconnect service. If the Legislature had intended to provide a deposit installment plan for existing customers seeking reconnection, the Legislature would have included customers within §1404(h). Instead, the Legislature limited this section to apply only to Applicants. Therefore, to require utilities to accept the deposit from customers in installments would be inconsistent with Chapter 14. Utilities may, of course, offer to accept the security deposit in installments, at the utilities' discretion.

The FirstEnergy Companies assert that it is inappropriate to provide a payment plan for a deposit required by an applicant who was terminated under 1404(a)(1)(vi) –

[1] It is unclear why the Legislature selected a 90 day period in §1404(h). In practice, the 60 day deposit payment policy set forth in the Implementation Order is actually consistent with the 90 day window in §1404(h). Since a utility submits the bill for the installment of the deposit on the customer's bill according to the billing cycle, by billing the applicant 25% of the deposit on the first bill (i.e., approximately 30 days after commencement of service) and the final 25% of the deposit on the second bill (i.e., approximately 60 days after commencement of service), and bill payments are due 20 days after the billing date, and considering the ten-day termination notice requirement of §1406(b), then the customer, in reality, has approximately 90 days to pay the deposit in full after the commencement of service under the Implementation Order procedures.

fraud or material misrepresentation of identity for the purpose of obtaining utility service, or 1404(a)(1)(vii) – tampering with meters, including, but not limited to, bypassing a meter or removal of an automatic meter reading device or other public utility equipment. To provide a payment plan to such a person would be, in essence, rewarding bad behavior.

5. Termination of service.

Subsections 56.83(1), (4), (5), (8) and (9) must be deleted because they are on their face inconsistent with Chapter 14.

The FirstEnergy Companies recommend that the dispute procedures in Chapter 56 be amended and clarified to be aligned with the spirit of Chapter 14. Under the current language of §56.141, a dispute may be filed any time up until the actual termination of service. This section is contrary to §56.142, which states that the dispute must be filed prior to the scheduled date of termination. The FirstEnergy Companies recommend that §56.141 be amended to be consistent with §56.142, to confirm that the dispute must be filed prior to the scheduled date of termination. This approach is consistent with current BCS guidelines and is good public policy. If a delinquent customer, after multiple notices, waits until the date of termination to file a dispute, the filing of that dispute should not serve to stay the termination. Of course, if the field representative observes a medical condition at the premises or receives the necessary payment, then termination will be avoided.

The FirstEnergy Companies further recommend that the regulations be modified to specify that absent extenuating circumstances (change of income, medical problems) which caused the customer to default on a prior BCS settlement, the BCS should not

entertain a new dispute from a customer within 120 days of the original decision. This will prevent abuses of the system, which was a primary intention of the Legislature in enacting Chapter 14. Similarly, the regulations should reflect that the utility does not need to provide a customer with dispute rights within 120 days of a BCS decision. Again, this procedure will further the implementation of the purpose of Chapter 14.

6. Winter termination procedures.

The FirstEnergy Companies agree with the proposed notification requirements, and assert that the regulations must reflect that it is the customer's responsibility to contact and alert the utility of the customer's financial situation.

Also, the regulations should be modified to specify that only one visit to the property is necessary for the utility to comply with §56.100 (4) and (5). While the health and safety of citizens is an important concern, to the extent that more than one visit to a property is deemed to be necessary by the BCS or other Commission departments, such subsequent visits to the property should be the responsibility of a state Social Services Agency – not the utility. The condition of a home, the health and safety of the occupants, including children, is a serious matter to be addressed by qualified, trained social service workers, not utility personnel.

Also, the regulations should provide that the accounts to be surveyed by the utility should only include accounts that were disconnected in the current calendar year. This would be consistent with current practice. Any suggestion in this rulemaking proceeding that this policy should be changed and expanded should be rejected. As mentioned above, if visits to the property are necessary beyond the initial winter survey visit

conducted by the utility, such visits should be the responsibility of qualified, trained social service workers.

The ANOPR proposes that utilities report to the Commission anytime the utility becomes aware of a "death following termination of utility service where it appears that the death may be linked to the lack of utility service." The FirstEnergy Companies respectfully assert that such a requirement would violate state and federal due process rights. Asking a utility to admit liability outside a civil judicial proceeding does not address the health and safety concerns with which the Commission is charged. Even without this reporting mandate, the Commission can investigate such a situation as it relates to adherence to regulations and policy and in this way will not violate due process rights of the utility. Further, this suggestion does not further the implementation of either the letter or the spirit of Chapter 14, and therefore should not be considered as this rulemaking proceeding develops.

7. Emergency Medical Procedures.

The purpose of a medical certification is to insure that utility service stays on during a medical emergency. It is not intended to forgive a customer from the obligation to pay for utility service. The regulations should address payment terms for a customer with a medical certification. During the period a medical certification is effective, although the service cannot be terminated, the customer nonetheless should abide by a payment agreement. The regulation should provide that a customer with a medical certification should enter into a new payment agreement, if eligible, or pay the catch-up amount on the existing payment agreement before the expiration of the medical certification. The customer should also provide financial information in order to

determine eligibility for financial assistance. This approach would be consistent with the intent underlying Chapter 14.

In addition, the FirstEnergy Companies recommend that the regulations adopt the BCS' existing guideline that households should be restricted to three medical certificates unless the arrearage is paid in full or the name changes on the account.

Finally, to eliminate any ambiguity, the regulations should add a definition of "Nurse Practitioner" as certified registered nurse practitioner (CRNP) licensed under the laws of the Commonwealth to engage in the practice in medicine as defined in Pa.C.S. Title 49, Chapter 21 21.25.

8. Commission informal complaint procedures.

In order to implement the purpose of Chapter 14, the regulations governing the informal complaint process should impose response deadlines on all parties in the matter, rather than just on the utilities.

9. Restoration of Service.

Similar to the issue of the disclosure of credit standards addressed in item 3 above, it is unnecessary and overly burdensome to require utilities to add to their tariffs their procedures and standards for determining whether an applicant is responsible for an unpaid account balance per §1407(d) and (e). Such procedures and standards may evolve over time and can be disclosed to a customer, applicant or the Commission upon request.

Section 1407 governs service restoration terms. Section 1405 governs payment agreement terms for customers who negotiate a payment agreement prior to termination

of service (if the Legislature intended for §1405 payment agreement terms to apply in a service restoration context, the Legislature would have incorporated §1405 into §1407). This approach is consistent with the Commission's March 3, 2005 Implementation Order (p. 9). Any suggestions in this rulemaking proceeding to the contrary should be rejected.

10. Reporting requirements.

The FirstEnergy Companies propose that this rulemaking initiative streamline the requirements in 56.231 to eliminate duplicate reporting requirements. For example, the following are examples of duplications between the monthly 231 report and the Biennial Report:

- Total number of residential customers
- Total number of active residential customers in arrears and not on a payment agreement
- Total dollar amount of active residential customers in arrears and not on a payment agreement
- Total number of terminations for non-payment of arrears.

As another example, consider the duplications between the annual Universal Services Report and the Biennial Report

- Annual collection operating expenses
- Annual Residential Billings
- Total dollar amount of gross residential write offs

To the extent the duplicative reporting efforts can be evaluated and eliminated in this rulemaking proceeding, efficiencies will be enjoyed by all stakeholders.

VI. Conclusion

The FirstEnergy Companies anticipate that there will be opportunities to participate in the identification and revision of additional inconsistencies between Chapter 14 and the existing regulations as this rulemaking proceeding develops.

The FirstEnergy Companies thank the Commission for the opportunity to comment on this important matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by Federal Express, as follows:

James J. McNulty, Secretary
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Service by electronic mail, as follows:

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